

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-213798**DATE:** June 12, 1984**MATTER OF:** Rapsco Wholesale Distributors and Arvin Industries, Inc.**DIGEST:**

Grantee's decision to reject low bid under advertised solicitation because equipment offered did not satisfy requirement for construction with specified noncorrosive materials was proper in the absence of a solicitation provision providing for the consideration of alternative materials to those specified.

Rapsco Wholesale Distributors and Arvin Industries, Inc. complain that the Housing Authority of El Paso, Texas, under a solicitation funded by the Department of Housing and Urban Development, improperly rejected Rapsco's bid offering Arvin evaporative air conditioners as nonresponsive to the requirement for construction with certain noncorrosive materials. Rapsco contends that Arvin's method for protecting metal is the equal of the specified materials in resisting corrosion and that the metal itself is noncorrosive because it is galvanized. Because the materials Rapsco bid did not satisfy the specification requirements, and because consideration of alternative materials was not permitted under the solicitation, we deny the complaint.

The solicitation required that the major structural components of the air conditioners, i.e., the blower housing, base, pad holders and top cap, be constructed of "polypropylene material, fiberglass or noncorrosive metal." The two low bidders, Rapsco and El Paso Pipe & Supply, offered Arvin air conditioners constructed of galvanized steel encapsulated in polyester epoxy plastic heated to shrink on the metal. Arvin labels this system of corrosion protection Polybond. Because the Housing Authority staff was unfamiliar with Polybond, they inspected an Arvin air conditioner and discussed the matter with Arvin's factory representative, and then concluded that if the Polybond coating became scratched or nicked, the underlying metal

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could corrode. Based on its staff recommendation, the Housing Authority rejected the two low bids offering Arvin air conditioners protected with Polybond and awarded the contract to the third low bidder, which offered air conditioners constructed of fiberglass.

Our Office reviews the propriety of contract awards made by grantees to insure that federal government agencies are requiring their grantees to comply with any applicable federal requirements, including the terms of the grant agreement. Wisner & Becker Contracting Engineers, B-202075, June 7, 1982, 82-1 CPD ¶ 518. We consider HUD's annual contribution contract with the Housing Authority as a grant for purposes of our review. Guarantee Electrical Company, B-201697, March 18, 1983, 83-1 CPD ¶ 276. HUD required that the Housing Authority comply with state and local laws when procuring supplies and, generally, that such contracts be awarded to the lowest bidder after advertising. Since none of the parties has cited any state law dealing with the responsiveness of bids, our review is founded on whether the Housing Authority's actions were consistent with the fundamental principles of federal procurement inherent in the concept of competition. Bus Industries of America, Inc., B-208366, March 7, 1983, 83-1 CPD ¶ 222. Under these principles, the test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform so that upon acceptance the contractor will be bound to perform in accordance with all material terms and conditions of the solicitation. Id.

Although it did not make the argument originally, Rapsco now contends that because the Arvin air conditioners it offered are constructed of galvanized steel, which is a noncorrosive metal, they satisfy the solicitation requirements without regard to the corrosion protection afforded by the Polybond coating. To support this position, Rapsco furnishes a definition of galvanizing from a technical dictionary which states that galvanizing is "used for rustproofing."

The difficulty with this argument is that noncorrosive metals, such as stainless steel, do not require coatings or treatment for rust proofing--the metal itself is for all practical purposes impervious to rust, or oxidation. Arvin's product lines reflect this distinction for, in addition to the Polybond protected air conditioners at issue here, the firm markets a higher priced line of air conditioners made with stainless steel components that are not protected with the Polybond process. Further, Arvin's

technical analysis and literature submitted in support of Rapsco's complaint do not suggest that galvanized steel is the equal of stainless steel in resisting corrosion; rather, the nub of Arvin's analysis is that the combination of galvanizing, plastic coating, and heat shrinking, which taken together constitute the Polybond system, result in a material that is as resistant to corrosion as stainless steel. Consequently, we cannot agree that galvanized steel alone satisfies the solicitation requirement for a noncorrosive metal.

As to the complete Polybond system, whatever its merits in resisting corrosion, it is not one of the three materials specified in the solicitation; consequently, a bid offering the Polybond system of corrosion protection cannot be considered an offer to provide the exact thing specified. Further, in the absence of solicitation language permitting the consideration of alternative materials, Rapsco's extensive argument that the Polybond system resists corrosion as well as the specified materials is not material to the determination of responsiveness, since the Polybond system is clearly not one of the materials specified. Any allegation that the specification unduly restricted competition by not permitting consideration of alternative products should have been made prior to the submission of bids and would now be untimely. Reliance Steel Products Company, B-206754, Jan. 24, 1983, 83-1 CPD ¶ 77. We therefore agree that the rejection of Rapsco's bid as nonresponsive was proper.

The complaint is denied.

Milton J. Dowd
for Comptroller General
of the United States